# Leasing Corp Sdn Bhd v Indah Lestari Sdn Bhd

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–982 OF 2005

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GOPAL SRI RAM, AHMAD MAAROP JJCA AND KANG HWEE GEE J

3 MARCH 2009

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*Civil Procedure — Injunction — Interlocutory injunction — Application to restrain sale of shares pledged as security for loan — Whether loan violated s 16 of the Moneylenders Act 1951 — Whether security given was void — Whether balance of justice lied in granting relief sought*

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By three agreements, the respondent company borrowed from the appellant a total sum of RM9m. As security for the loan, 540,000 shares in a public listed company were pledged by way of memorandum of deposit. Later, 88,000 shares were redeemed leaving a balance of 452,000 in the appellant's hands. Subsequently, disputes arose between the parties and the appellant as lender threatened to sell the security in his hand. The respondent filed a suit and obtained an interlocutory injunction restraining the sale of the shares in question. The appellant thus appealed against the decision of the High Court granting the injunction.

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**Held**, dismissing the appeal with costs:

The respondent's case was that the loan violated s 16 of the Moneylenders Act 1951 and was void. If a loan is void, then any security given as collateral for it is also void. *Kasumu v Baba Egbe* [1956] AC 539; *Subchent Kaur v Chai Sau Kian* [1958] MLJ 32; *Overseas Union Finance Limited v Lim Joo Chong* [1971] 2 MLJ 124 referred. If the respondent was correct in its argument and the trial court found the loan to be indeed illegal and unenforceable a prior forced sale by the appellant would prima facie destroy the specific security given by the respondent to secure that loan. In the circumstances, the justice of the case lies in granting interim relief to protect the respondent in respect of its security. The court was satisfied that discretion of the trial judge was correctly exercised (see paras 4-6).

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**[Bahasa Malaysia summary**

Melalui tiga perjanjian, syarikat responden meminjam daripada perayu sejumlah RM9 juta. Sebagai jaminan untuk pinjaman tersebut, 540,000 saham di dalam syarikat yang disenarai umum diberikan melalui memorandum deposit. Kemudian 88,000 saham ditebus meninggalkan baki 452,000 dalam pegangan perayu. Selepas itu, pertikaian berbangkit di antara pihak-pihak dan perayu sebagai peminjam mengugut untuk menjual jaminan

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di dalam pegangannya. Responden memfailkan guaman dan memperoleh injunksi interlokutori menghalang penjualan saham yang dipersoalkan. Perayu oleh itu merayu terhadap keputusan Mahkamah Tinggi membenarkan injunksi.

**Diputuskan**, menolak rayuan dengan kos:
Kes responden adalah bahawa pinjaman tersebut melanggar s 16 Akta Pemberipinjam Wang 1951 dan adalah batal. Jika sesuatu pinjaman adalah batal, maka apa-apa jaminan yang diberikan sebagai kolateral untuknya juga adalah batal. *Kasumu v Baba-Egbe* [1956] AC 539; *Subchent Kaur v Chai Sau Kian* [1958] MLJ 32; *Overseas Union Finance Limited v Lim Joo Chong* [1971] 2 MLJ 124 dirujuk. Jika responden betul dalam hujahannya dan mahkamah bicara mendapati pinjaman tersebut sememangnya salah dari segi undang-undang dan tidak boleh dikuatkuasakan, jualan secara paksa yang sebelumnya oleh perayu adalah secara prima facie akan memusnahkan jaminan spesifik yang diberikan oleh responden untuk mendapatkan pinjaman. Dalam keadaan tersebut, keadilan kes memihak kepada pemberian relief interim untuk melindungi responden berkaitan dengan jaminannya. Mahkamah berpuas hati bahawa budi bicara hakim bicara dilaksanakan secara betul (lihat perenggan 4-6).]

**Notes**

For cases on interloctory injunction, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3544–3691.

**Cases referred to**

*Kasumu v Baba-Egbe* [1956] AC 539, PC (refd)
*Overseas Union Finance Ltd v Lim Joo Chong* [1971] 2 MLJ 124, HC (refd)
*Subchent Kaur v Chai Sau Kian* [1958] MLJ 32, HC (refd)

**Legislation referred to**

Moneylenders Act 1951 s 16
Specific Relief Act 1950 s 11(2)

**Appeal from**: Civil suit No S1–22–680 of 2005 (High Court, Kuala Lumpur).

*Fahri Azzat (Azzat & Izzat) for the appellant.*
*CK Yeoh (Sidhu & Associates) for the respondent.*

**Gopal Sri Ram JCA (delivering the judgment of the court):**

**[1]** This is the judgment of the court.

**[2]** By three agreements dated 16 October 2000, 16 November 2000 and 10 September 2003 the respondent company (plaintiff below) borrowed from the appellant (defendant below) a total sum of RM9m. As security for the loan, 540,000 shares in a public listed company were pledged by way memorandum of deposit also dated 16 October 2000. Later, 88,000 shares were redeemed leaving a balance of 452,000 in the appellant's hands. Later still, disputes arose between the parties and the appellant as lender threatened to sell the security in his hand. The respondent filed suit and obtained an interlocutory injunction restraining the sale of the shares in question. The appellant now appeals against the decision of the High Court granting the injunction.

**[3]** At the outset we formed the prima facie view that the learned judged was wrong in granting the injunction. The shares were freely available in open market and in accordance with the settled principles underlying s 11(2) of the Specific Relief Act 1950, injunctions are not usually granted in cases such as the present. For that reason we stopped appellant's counsel from arguing his appeal and called upon counsel for the respondent to submit why the appeal should not be allowed. However, having heard arguments from both sides we are now convinced that the preliminary view we entertained was wrong and that the appeal should be dismissed for the reasons which now follow.

**[4]** Although a number of points were taken by the respondent in supporting the decision appealed against, only one merits discussion. It is this. The respondent's case is that the loan violates s 16 of the Moneylenders Act 1951 and is void. If a loan is void, then any security given as collateral for it is also void. See, *Kasumu v Baba Egbe* [1956] AC 539; *Subchent Kaur v Chai Sau Kian* [1958] 24 MLJ 32; *Overseas Union Finance Limited v Lim Joo Chong* [1971] 2 MLJ 124.

**[5]** Now, if the respondent is correct in its argument and the trial court finds the loan to be indeed illegal and unenforceable a prior forced sale by the appellant would prima facie destroy the specific security given by the respondent to secure that loan. When put in this fashion, it is plain to see where the justice of the case lies. It lies in granting interim relief to protect the respondent in respect of its security.

**[6]** Although the reasons given by the learned judge for his decision do not coincide with our own, we are satisfied that discretion was correctly exercised having regard to the issue that we have discussed a moment ago. Since this is an interlocutory appeal, the less we say about the merits the better. For that reason we will not address at all the arguments advanced before us on whether the loan is illegal and on the appellant's argument as to whether the respondent is

estopped from asserting its illegality given its conduct in all the circumstances of the case. These are matters strictly for the trial court to determine and we do not propose to usurp that function.

**[7]** For the reasons already given, this appeal is dismissed with costs. The orders of the High Court are affirmed. The appellant shall pay the costs of this appeal to the respondent. The deposit to the respondent to the account of its taxed costs.

*Appeal dismissed with costs.*

Reported by MF Ibrahim